

From: Marc S Weintraub
To: Microsoft ATR
Date: 1/26/02 2:11am
Subject: Microsoft Settlement

Dear Sir,

In accord with the Tunney Act, I am submitting my comments on the Proposed Final Judgement in the Microsoft proceedings (commonly known by the somewhat inaccurate description: "DOJ vs Microsoft").

There are many reasons why I find fault with the proposed settlement. In order to keep this comment brief, I will focus my comments on one specific area that I believe has not received a great deal of commentary from the public.

I am very concerned about the faulty definitions and their implications. There are numerous examples of alterations to definitions found in the Findings of Fact as they have been "reproduced" in the PFJ. For example:

Definition A - "API"

The FOF defines "API" as "the interfaced between application programs and the operating system."

The PFJ has altered it to mean only "the interfaces between Microsoft Middleware and Microsoft Window, excluding Windows APIs used by other application programs." The PFJ's definition of API permits Microsoft to omit important APIs that are crucial to Independent Software Vendors' ability to write software that integrates with Windows to the same extent to which competing Microsoft products are able to do so.

Definition J - "Microsoft Middleware"

The FOF defines "middleware" as "application software that itself presents a set of APIs which allow users to write new applications without reference to the underlying operating system."

The PFJ destroys the intent and spirit of that definition by making it possible for Microsoft to avoid compliance simply by altering the form of version enumeration or the method of distribution of the products it miserly lists as "middleware." The PFJ leaves so many holes open to Microsoft as to make the concept of "middleware" a moot point in terms of measuring Microsoft's adherence to the PFJ's remedies. That is simply wrong and must not be permitted.

Definition K - "Microsoft Middleware Product"

The PFJ restricts the list of products to Internet Explorer, Microsoft Java, Windows Media Player, Windows Messenger and Outlook Express. It deliberately omits the obvious selections of Microsoft .NET, C# , Outlook and Office. There are, no doubt, other products that fit the proper definition of "middleware" and should be included as well. In fact, ideally, there should not be a list of what DOES apply, rather there should be a list of what DOES NOT. The fact is that no one at Microsoft is going to willingly include every product that should be a member of the list unless forced to do so. By changing the rules of defining the term "middleware" such that everything is included except that which is explicitly excluded, Microsoft will be forced to realistically explain the VALID reasons why any product should be added to the exclusion list. Only then can there be a reasonable expectation that essential APIs MIGHT become available to ISVs.

Definition U - "Windows Operating System Product"

The PFJ makes unreasonable assumptions about what constitutes a Windows Operating System product. It specifically restricts the definition to "only Windows 2000 Professional, Windows XP Home, Windows XP Professional and their successors." What about existing Windows products such as Windows CE? What about the XBox which Microsoft clearly states runs an embedded version of Windows XP? Does "embedded" mean it is not "Home" and it is not "Professional" and therefore it "does not count?" What about the Tablet PC featuring Windows XP Tablet PC Edition? I do not see the words "Home" or "Professional" in that name, does it count? I am certain that my and the ISV industry's answer to each "does it count" question is a resounding YES, however I am equally certain that Microsoft's is a resounding NO.

As the PFJ definition currently reads, Microsoft can evade the provisions of the Final Judgment by shifting its efforts away from the Operating Systems listed in Definition U and towards Windows XP Tablet Edition.

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Windows CE, Pocket PC, X-Box or some other Microsoft Operating System that can execute Windows applications. That is simply wrong and must not be permitted.

True competition cannot be ensured due to the faulty definitions included in the PFJ. The unwarranted restrictions and syntactic gymnastics employed ensure that Microsoft can evade the purpose behind the action taken by the DOJ and several State's AGs. The purpose should be clear to everyone, it is to ensure that Microsoft ceases and desists from i anti-competitive practic

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How should the Final Judgment erode the Applications Barrier to Entry?

The PFJ tries to erode the Applications Barrier to Entry in two ways:

By forbidding retaliation against OEMs, ISVs, and IHVs who support or develop alternatives to Windows.

By taking various measures to ensure that Windows allows the use of non-Microsoft middleware.

A third option not provided by the PFJ would be to make sure that Microsoft raises no artificial barriers against non-Microsoft operating systems which implement the APIs needed to run application programs written for Windows. The Findings of Fact (¶52) considered the possibility that competing operating systems could implement the Windows APIs and thereby directly run software written for Windows as a way of circumventing the Applications Barrier to Entry. This is in fact the route being taken by the Linux operating system, which includes middleware (named WINE) that can run many Windows programs.

By not providing some aid for ISVs engaged in making Windows-compatible operating systems, the PFJ is missing a key opportunity to encourage competition in the Intel-compatible operating system market. Worse yet, the PFJ itself, in sections III.D. and III.E., restricts information released by those sections to be used "for the sole purpose of interoperating with a Windows Operating System Product". This prohibits ISVs from using the information for the purpose of writing operating systems that interoperate with Windows programs.

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